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8 IN THE UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DIAMOND PLEASANTON
12 ENTERPRISE, INC.

13 Plaintiff,
14

15 vs.

16 THE CITY OF PLEASANTON,
and DOES 1 through 25,
17 inclusive

18 Defendants.
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CASE NO: C 12-0254
ORDER SETTING TERMS OF
**TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION [proposed]**

20 Based on plaintiff's Complaint, Motion for Temporary Restraining Order and Order to
21 Show Cause re Preliminary Injunction and supporting memorandum of points and authorities and
22 declarations, plaintiff has shown a likelihood of success on the merits of its claim and there are
23 sufficient grounds for concluding that irreparable injury to plaintiff's First Amendment and due
24 process rights will likely occur absent entry of a temporary restraining order. Therefore, it is
25 hereby *ORDERED* as follows:

26 1. Defendant CITY OF PLEASANTON, its employees and agents, are temporarily restrained
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from enforcing, applying, or otherwise giving any legal effect to the City's requirement of advanced approval by the Director of Community Development, or any other City official, of a change in music selection at Plaintiff's nightclub premises at 4825 Hopyard Road in the City of Pleasanton, pending further order of this court. It is further *ORDERED* that Defendant CITY OF PLEASANTON, its employees and agents, are temporarily restrained from enforcing, applying, or otherwise giving any legal effect to Pleasanton Municipal Code section 18.224.130, allowing the City to automatically suspend a conditional use permit in effect at 4825 Hopyard Road in the City of Pleasanton, pending further order of this court.

~~2. This temporary restraining order shall expire in fourteen days unless it is extended for good cause shown by further order of this court.~~

3. This temporary restraining order shall become effective immediately upon entry by the court.

4. Plaintiff is required to post a bond or other security in the amount of \$ 10,000.

It is on this 20th day of January further *ORDERED* that defendant CITY OF PLEASANTON, through its representatives, appear and show cause before the United States District Court, Department 3 at the Federal Courthouse at ~~450 Golden Gate Avenue in San Francisco~~, California at 9 o'clock in the am or as soon thereafter as counsel can be heard, on the 7th day of March, 2012, why an order should not be issued preliminarily enjoining and restraining defendant City of Pleasanton from: (1) enforcing any requirement of advanced approval by a City official of a change in music selection at Plaintiff's nightclub premises at 4825 Hopyard Road in the City of Pleasanton; (2) from enforcing, applying, or otherwise giving any legal effect to Pleasanton Municipal Code section 18.224.130, allowing the City to automatically suspend a conditional use permit in effect at 4825 Hopyard Road in the City of Pleasanton; (3) from suspending or revoking a conditional use permit in effect at 4825 Hopyard Road in the City of Pleasanton pending a final decision of this court as to the constitutionality of the Condition Use Permit restrictions and pending any final judicial decision

1 on the merits of a suspension or revocation proceeding, if any be brought, pending further order
2 of this court.

3 ~~And it is further ORDERED that:~~

4 1. A copy of this order to show cause, the complaint, legal memorandum and any supporting
5 affidavits or certifications submitted in support of this application be served upon the defendant
6 personally within ___ days hereof, this being original process.

7 2. The plaintiff must file with the court its proof of service of the pleadings on the defendant no
8 later than ___ days before the return date.

9 3. Defendant shall file and serve a written response to this order to show cause and the request
10 for entry of injunctive relief and proof of service by _____, 2012.

11 4. The plaintiff must file and serve any written reply to the defendant's order to show cause
12 opposition by _____, 2012.

13 5. If the defendant does not file and serve opposition to this order to show cause, the application
14 will be decided on the papers on the return date and relief may be granted by default, provided
15 that the plaintiff files a proof of service at least ___ days prior to the return date.

16 6. The Court will entertain argument, but not testimony, on the return date of the order to show
17 cause, unless the court and parties are advised to the contrary no later than _____ days before the
18 return date.

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20 DATED this 20 day of January, 2012 at 12:30 ~~a.m.~~/p.m.

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24 UNITED STATES DISTRICT COURT

